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European Court interim measures: A new tool in the fight against disappearances in the North Caucasus

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Abductions and enforced disappearances remain one of the most serious forms of human rights violation in the North Caucasus. The prevalence of impunity and failings in the rule of law in this region, especially in the Chechen Republic, have compelled human rights activists to look for new legal mechanisms to prevent disappearances and murder.

In mid-2009, given the persistently high number of abductions in

the North Caucasus, the lawyers of the EHRAC-Memorial joint project began to use a new tool when lodging ECtHR applications in cases concerning recent abductions. In order to try to prevent abducted persons from subsequently disappearing without trace, the lawyers resorted to requesting that the ECtHR apply interim measures in these cases. This had not previously been done by Russian human rights activists.

The interim measures envisaged under Rules 39-41 of the Rules of Court are predominantly applied in cases concerning the extradition of an ap-

plicant to a country where he or she might be subjected to treatment that violates Arts. 2 (right to life) or 3 (prevention of torture or inhuman or degrading treatment) ECHR. However, it is argued that in instances of abduction, interim measures may be also applied with respect to a respondent state where the abduction is recent, there is strong evidence of the involvement of state agents and it is clear that the investigative bodies are unable or unwilling to effectively investigate. Thus, when lodging a complaint with the ECtHR the relatives of an abducted

person could request urgent protective measures, including a lawyer being immediately granted access to an unlawfully detained person and, if necessary, the provision of medical assistance to the victim. The ECtHR can then apply Rule 40 (urgent notification of an application), under which the respondent state would be urgently notified of the case, and requested to provide information on the involvement of state agents in the abduction. The ECtHR must then decide whether to apply Rule 39 (interim measures), providing for the application of urgent protective measures, on the basis of the information received from the respondent state.

The obvious advantage of this strategy is that it may serve as an additional stimulus for state authorities to investigate a case, search for an abducted person and provide exhaustive information on the case. Additionally, it could provide the opportunity to obtain timely evidence before an abducted person disappears without trace, as is usually the case. Such an intervention by the ECtHR, together with other factors, may be decisive in the fate of an abducted person.

The use of this practice by Russian human rights organisations is believed to have been influential in the release of four abducted persons. Although it is

still premature to speak about the overall effectiveness of this strategy, it is presumed that the timely involvement of the ECtHR in these cases helped prevent the disappearance without trace of these four Chechens and encouraged their relatively prompt release.

In all four cases the abductions followed the typical 'Chechen pattern' in which unidentified armed persons detained the victims without producing any documents and took them away in an unknown direction. Immediately after the abduction their relatives applied to the local authorities and to human rights activists for help. The Prosecutor's Office initiated criminal cases, but the subsequent steps necessary to find and release the persons were not taken. Sometimes the criminal case was initiated long after the abduction. The authorities' inaction and the possible involvement of State agents in the abduction served as grounds for the relatives to apply to the ECtHR requesting interim measures.

To date the ECtHR has not applied Rule 39 in any of the Chechen abduction cases and even in the four 'successful' cases in which the victims were released, the ECtHR only partially satisfied the applicants' requests. In most of the cases the Court applied Rules 40 and 41 (order of dealing with cases)

sending requests for information to the State and giving the cases priority. The victims in the 'successful' cases were released 52 days, 42 days, eight days and three months after having been abducted.¹

It is possible that one reason for the non-application of Rule 39 may be the difficulty of obtaining direct evidence of the involvement of state agents in an abduction. If the ECtHR is not satisfied that state agents were involved it may be that it will not risk ordering measures that could not be fulfilled should the state not be responsible. Furthermore, the ECtHR is cautious in applying Rule 39 given that it is a mechanism that should only be applied in extraordinary cases.

Despite this, it is hoped that the North Caucasus applications to the ECtHR under Rules 39-41 can still be considered to be an important and useful new tool in the struggle against abductions and disappearances, acting as an additional stimulus for an effective investigation to be conducted, providing for the disclosure of information regarding the case to the ECtHR and, most importantly, potentially assisting in the release of an abducted person.

¹ In order to protect the victims and their families the names and details of the cases in question are not provided.